

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

JOE ANDREW SALAZAR

Plaintiff,

v.

HTC CORPORATION et al.,

Defendants.

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Case No. 2:16-cv-1096-JRG-RSP

**RENEWED MOTION TO DISMISS AS TO SECOND AMENDED COMPLAINT
PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 12(b)(6)**

Defendant HTC Corporation (“HTC”) moves to dismiss Plaintiff’s Second Amended Original Complaint for Patent Infringement (Dkt. # 44), (the “Second Amended Complaint”) for the reasons set forth in HTC’s pending Motion to Dismiss First Amended Original Complaint Pursuant to Federal Rule of Civil Procedure 12(b)(6) (Dkt. # 28) and HTC’s Reply in support of that motion to dismiss (Dkt. # 36).

Plaintiff’s Second Amended Complaint (Dkt. # 44), filed on June 15, 2017, for the first time adds AT&T, Inc. (“AT&T”) as a defendant. The Second Amended Complaint adds three new paragraphs (¶¶ 5, 6, 11), which contain allegations related solely to AT&T. As to the remaining allegations, Plaintiff has made only minor, non-substantive revisions to the allegations found in his First Amended Complaint (Dkt. #17), primarily to change references to “Defendant” to references to “Defendants.”

None of the changes in Plaintiff’s Second Amended Complaint alter or remedy the deficiencies identified in HTC’s pending Motion to Dismiss (Dkt. #28). For the convenience of the Court, a redlined version of Plaintiff’s Second Amended Complaint, showing these changes

is attached hereto as Exhibit A. The addition of new paragraphs 5, 6, and 11 in the Second Amended Complaint also changed the numbers of certain other paragraphs that contain the allegations corresponding to those First Amended Complaint, which are cited in HTC's pending Motion to Dismiss (Dkt. # 28) and HTC's reply brief (Dkt. # 36). The following chart shows the correspondence between the paragraph numbers cited by HTC in its briefs and the rennumbers paragraphs in the SecondAmended Complaint

First Amended Complaint (Dkt. # 17)(cited in HTC's motion and reply brief)	Second Amended Complaint (Dkt. # 44)
¶ 5	¶ 7
¶ 11	¶ 13
¶ 14	¶ 16
¶ 15	¶ 17
¶ 16	¶ 18
¶ 17	¶ 19
¶ 18	¶ 20
¶ 19	¶ 21
¶ 21	¶ 23

In order to avoid burdening the Court with duplicative briefing, HTC adopts and renews the statements and arguments in HTC's previously-filed motions to dismiss (Dkt. # 28) and reply (Dkt. # 36). If the Court wishes HTC to refile the earlier briefing with references to the Second Amended Complaint, HTC will promptly comply.

Respectfully submitted,

/s/ Jerry R. Selinger

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ATTORNEYS FOR DEFENDANT
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CERTIFICATE OF SERVICE

I hereby certify that on June 23, 2017, I electronically filed the foregoing document with the clerk of court for the U.S. District Court, Eastern District of Texas, using the electronic case filing ("ECF") system of the court. The attorneys of record who have consented in writing to accept notice as service of this document by electronic means are being served pursuant to Local Rule CV-5(a)(3) by a "Notice of Electronic Filing," sent by the ECF system.

/s/ Jerry R. Selinger